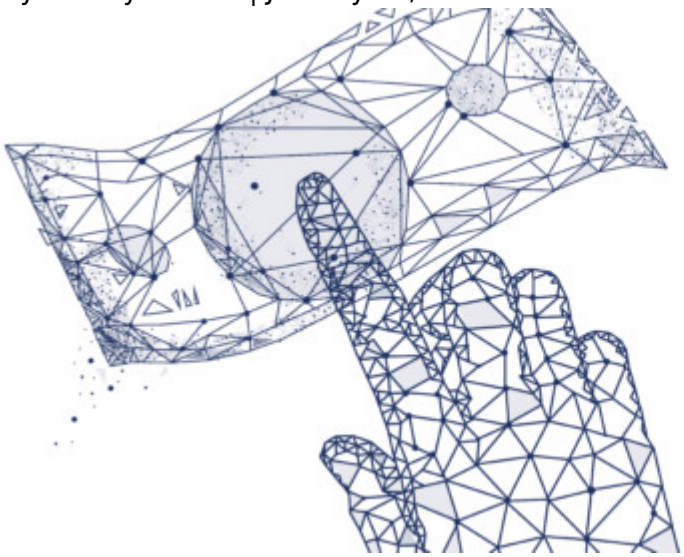
CAN YOU OWN FACEBOOK'S LIBRA CRYPTOCURRENCY?

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Introduction

Facebook recently announced its 2020 plans to launch its first cryptocurrency, Libra. There are mixed feelings amongst people as some are welcoming this initiative as a promotion for financial inclusion, while others are sceptical about people's privacy and the potential for an increase in cybercrime. Libra is not the only cryptocurrency on the market, we have popular ones like Bitcoin[1], which has been around for just over a decade, Ethereum,[2], Litecoin,[3] and Ripple.[4] Many people have created cryptocurrency accounts and e-wallets, including South Africans and cryptocurrency trading platforms like Luno have become increasingly popular.

But what is cryptocurrency?

A cryptocurrency is a digital representation of value that is neither issued by a central bank or a public authority nor necessarily attached to a flat currency, but accepted by natural or legal persons as a means of payment that can be transferred, stored or traded electronically. Cryptocurrencies can be referred to as virtual currencies, crypto assets or digital currency. The main features of virtual currency are that it is decentralised and independent of any central authority, it makes use of encryption for security, transactions are anonymous, and is accepted across international borders.

KYC and cryptocurrencies

To open a bank account in South Africa, a person must go to a financial institution or bank with their identifying particulars which includes their identity documents and proof of residence. The banks will verify the documents submitted by the customer by conducting the Know Your Customer (KYC) due diligence process. This process is popularly known as the FICA process, named after the underlying legislation, the Financial Intelligence Centre Act[5]. The challenge with cryptocurrencies is that there

is no obligation for the cryptocurrency trading platform to request a customer to provide their identifying particulars or verify their identity. Neither do they have central monitoring bodies and anti-money laundering (AML) software to oversee and identify transactions which have suspicious trends. This means that anyone can buy and own cryptocurrencies without having to disclose their identity. Due to the anonymity afforded by cryptocurrencies, many criminals make use of cryptocurrencies to launder their money or to get payment for any illicit activities. This is one of the reasons why online marketplaces like the Silk Road[6] were flourishing.

South Africa on the road to crypto regulation

In 2014, the National Treasury together with the South African Reserve Bank (SARB), the Financial Services Board (now the Financial Sector Conduct Authority (FSCA)), the South African Revenue Service (SARS) and the Financial Intelligence Centre (FIC) issued a warning to users of cryptocurrencies. The warning was that cryptocurrencies were not legal tender and there was no legal protection or recourse afforded to users of cryptocurrencies. The SARB also issued its Position Paper in the same year in which it cautioned the public about the risks of trading in cryptocurrencies. Shortly after, the SARB appointed a team of experts (the Intergovernmental FinTech Working Group (IFWG)) to research cryptocurrencies and their perceived impact on the South African economy. The findings of the IFWG led to the SARB issuing a Consultation Paper on cryptocurrencies in 2019.

The Consultation Paper proposes that the Financial Intelligence Centre should include crypto assets service providers in the definition of an accountable institution. What this inclusion means is that companies like Facebook should put KYC/AML mechanisms in place before it can offer Libra cryptocurrency to the South African market. Knowing that Facebook already has access to a significant amount of personal information of its users, is there a need for it to comply with the KYC /AML mechanisms when it already 'knows' its customers based on the amount of personal information it has access to and processes? It can be argued that having access to vast amounts of personal information of its customers does not equate to meeting the KYC/AML requirements set out in FICA. Therefore, Facebook should still follow the same process followed by other accountable institutions before it can roll out the Libra cryptocurrency in South Africa.

Since the Consultation Paper has recommended the review of existing regulatory frameworks, it can be anticipated that different laws will be amended in order to accommodate cryptocurrencies. Already, some pieces of legislation like the Value Added Tax Act[7] have been amended to treat the issue of acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency as financial service exempt from VAT scope. Where you earn an income or accrue income on your cryptocurrency transactions, SARS taxes that income on revenue account under gross income. It remains to be seen if a completely new piece of legislation will be drafted to regulate cryptocurrencies in South Africa.

Conclusion

Cryptocurrency trading is permitted in South Africa, despite not having regulations in the industry. If the law is not updated by the time Facebook rolls out the Libra coin in 2020, then people can own and trade in Libra at their own risk. The proposal to include cryptocurrency service providers on the list of accountable institutions is a commendable step as it will discourage cybercriminals from abusing crypto trading platforms while at the same time promoting financial inclusion and innovation.

[1] Satoshi Nakamoto is the name behind the development of Bitcoin. In the wake of the global

economic meltdown of 2008, Satoshi Nakamoto expressed the need for an electronic payment system based on cryptographic proof instead of trust, allowing any two willing parties to transact directly with each other without the need for a trusted third party. Cuccuru, P., (2017). Beyond bitcoin: An early overview on smart contracts. Journal of Law and Information Technology, 25, 179 -195.

[2] Ethereum was created by a Canadian Vitalik Buterin in 2014. It is based on the blockchain technology and is popularly known for introducing smart contracts. It allows anyone to build and use the decentralised application that runs on blockchain technology.

[3] Litecoin is a type of cryptocurrency that was developed by Charles Lee in 2011.

[4] Ripple was launched in 2013 by Jed McCaleb and is a single, decentralised and global network of banks and payment providers using Ripple's distributed financial technology which provides real time messaging, clearing and settlement of financial transactions.

[5] Act 38 of 2001.

[6] Martin, J., (2014). Lost on the Silk Road: Online drug distribution and crypto market. Criminology and Criminal Justice, 14, 351 – 367.

[7] Act 89 of 1991.